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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 STEVEN LOPEZ,

11 Plaintiff,

12 v.

13 SMELOSKY, et al.

14 Defendants.  
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Civil No. 08cv1648

ORDER ADOPTING THE  
MAGISTRATE JUDGE'S REPORT  
AND RECOMMENDATION,  
OVERRULING PLAINTIFF'S  
OBJECTIONS AND GRANTING  
PLAINTIFF SIXTY DAYS TO FILE  
AN AMENDED COMPLAINT

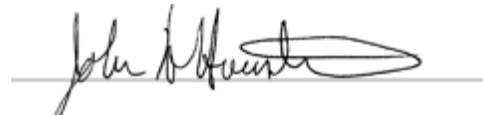
17 On September 8, 2008, plaintiff filed a complaint for relief under 42 U.S.C §1983 based  
18 on allegations that defendants knew another inmate planned to injure plaintiff but did not take  
19 action to prevent plaintiff's injury. Defendants filed a motion to dismiss plaintiff's complaint  
20 for failure to exhaust administrative remedies on January 23, 2009. Plaintiff did not file an  
21 opposition. Magistrate Judge Cathy Bencivengo issued an report and recommendation  
22 ("report") recommending this Court grant defendant's motion to dismiss based on plaintiff's  
23 failure to exhaust administrative remedies. Plaintiff filed an objection to the R&R which  
24 objected to the magistrate judge's determination that there are no facts in dispute in this matter  
25 and requests "that the complaint be Granted to the court to resolve this dispute and give justice  
26 to this matter, and/or grant an evidentiary hearing to view and decide on the disputed facts  
27 (sic)." Doc. 23 at 2. In the alternative, plaintiff requests an emergency extension of time  
28 pursuant to Federal Rule of Civil Procedure 6(b) to file an opposition to defendant's motion

1 to dismiss and leave to file an amended complaint. Id. at 6. Defendants' reply states they do  
2 not object to plaintiff's request for an extension of time.

3 This Court finds that the report provides a cogent analysis of the issues presented in the  
4 plaintiff's complaint and agrees with the findings of the Magistrate Judge's report. Accordingly,  
5 this Court OVERRULES plaintiff's objections, ADOPTS the magistrate judge's report in its  
6 entirety, and DISMISSES plaintiff's complaint WITHOUT PREJUDICE. Plaintiff may file an  
7 amended complaint on or before November 17, 2009.

8 IT IS SO ORDERED.

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10 DATED: September 22, 2009

  
11 JOHN A. HOUSTON  
12 United States District Judge  
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